

APPEAL NO. 040087
FILED FEBRUARY 27, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 9, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable low back injury on or about _____; that the claimant's compensable injury extended to include a herniation at L3-4; and that the claimant had disability beginning April 18, 2003, and continuing through the date of the CCH. The appellant (carrier) appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence so as to be clearly erroneous and manifestly unjust. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that he was employed as a driver and operator of a piece of heavy machinery called a compactor. The claimant testified that on April 17, 2002, as he was twisting his back to look in the rear direction, he drove over a rock that caused the compactor and him to bounce. The claimant stated that he felt a sharp pain to his back and leg. The following day, the claimant was transported by ambulance to a hospital emergency room (ER) because his back and leg pain had worsened. A medical report dated April 18, 2003, reflects that the claimant complained of back pain and was subsequently found to have a kidney stone. The claimant underwent surgery to remove his kidney stone on April 24, 2003. The claimant testified that he continued to have back pain even after his surgery and that he was transported to the ER by ambulance on two other occasions for back pain, specifically April 30, 2003, and May 7, 2003. An MRI of the lumbar spine dated May 9, 2003, reflects a left lateral L3-4 disc herniation. The claimant testified that his last date of employment was _____, and that he has not been able to work because of his low back injury.

The issues of injury, extent of injury, and disability presented questions of fact for the fact finder. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer noted that the claimant met his burden of proving that his twisting while operating the compactor over rough ground on

_____, was a producing cause of a low back injury; that the MRI and medical records established that the injury included a herniation at L3-4; and that the claimant's testimony and the Work Status Reports (TWCC-73) established disability for the period claimed. Nothing in our review of the record reveals that the hearing officer's injury, extent of injury, and disability determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701-3403.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Edward Vilano
Appeals Judge